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SENATE BILL 1257 By
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HOUSE BILL 1253
By Cole (Dyer)

AN ACT to amend Tennessee Code Annotated, Title 56, relative to the prevention of the improper selling, leasing, or transferring of a healthcare provider's contract.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Section 7, Part 1, is amended by adding the following new section to be designated as follows:

56-7-125.

(a) In order to prevent the improper selling, leasing, or transferring of a healthcare provider's contract, it is the intent of the general assembly that every arrangement that results in any payor paying a healthcare provider a reduced rate for healthcare services based on the healthcare provider's participation in a network or panel shall be disclosed to the provider in advance and shall actively encourage patients to use the network, unless the healthcare provider agrees to provide discounts without active encouragement.

(b) Beginning January 1, 2002, every contracted agent that sells, leases, assigns, transfers, or conveys its list of contracted healthcare providers and their

contracted reimbursement rates to a payor or another contracting agent shall, upon entering or renewing a provider contract, do all of the following:

(1) Disclose whether the list of contracted providers may be sold, leased, transferred, or conveyed to other payors or other contracting agents, and specify whether those payors or contracting agents include workers compensation insurers or automobile insurers.

(2) Disclose what specific practices, if any, payors utilize to actively encourage a payor's beneficiaries to use the list of contracted providers when obtaining medical care that entitles a payor to claim a contracted rate. For purposes of this paragraph, a payor is deemed to have actively encouraged its beneficiaries to use the list of contracted providers if one of the following occurs:

(A) The payor offers its beneficiaries direct financial incentives to use the list of contracted providers when obtaining medical care. "Financial incentives" means reduced copayments, reduced deductibles, premium discounts directly attributable to the use of a provider panel, or financial penalties directly attributable to the nonuse of a provider panel.

(B) The payor provides information directly to beneficiaries advising them of the existence of the list of contracted providers through the use of a variety of advertising or marketing approaches that supply the names, addresses, and telephone numbers of contracted providers to beneficiaries in advance of their selection of a healthcare provider, which approaches may include, but are not limited to, the use of provider directories, or the use of toll-free telephone numbers or internet web site

addresses supplied directly to every beneficiary. However, internet web site addresses alone shall not be deemed to satisfy the requirements of this subparagraph. Nothing in this subparagraph shall prevent contracting agents or payors from providing only listings of providers located within a reasonable geographic range of a beneficiary.

(3) Disclose whether payors to which the list of contracted providers may be sold, leased, transferred, or conveyed may be permitted to pay a provider's contracted rate without actively encouraging the payors' beneficiaries to use the list of contracted providers when obtaining medical care.

(4) Disclose upon the initial signing of a contract, and within thirty (30) calendar days of receipt of a written request from a provider or provider panel, a payor summary of all payors currently eligible to claim a provider's contracted rate due to the provider's and payor's respective written agreements with any contracting agent. Nothing in this subdivision shall be construed to require a payor to actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care in the case of an emergency.

(c) A contracting agent shall allow providers, upon the initial signing, renewal, or amendment of a provider contract, to decline to be included in any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care as described in paragraph (2) of subsection (b). Each provider's election under this subsection shall be binding

on every contracting agent or payor that buys, leases, or otherwise obtains a list of contracted providers.

(d) A provider shall not be excluded from any list of contracted providers that is sold, leased, transferred, or conveyed to payors that actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care, based upon the provider's refusal to be included on any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care.

(e) A payor shall provide an explanation of benefits or explanation of review that identifies the name of the plan or network that has a written agreement signed by the provider whereby the payor is entitled, directly or indirectly, to pay a preferred rate for the services rendered.

(f) A payor shall demonstrate that it is entitled to pay a contracted rate within thirty (30) business days of receipt of a written request from a provider who has received a claim payment from the payor. The failure of a payor to do so shall render the payor liable for the amount the payor would have been required to pay pursuant to the contract between the payor and the beneficiary, which amount shall be due and payable within ten (10) days of receipt of written notice from the provider, and shall bar the payor from taking any future discounts from that provider without the provider's expressed written consent until the payor can demonstrate to the provider that it is entitled to pay a contracted rate as provided in this subsection. A payor shall be deemed to have demonstrated that it is entitled to pay a contracted rate if it complies with either of the following:

(1) Discloses the name of a network that has a written agreement with the provider whereby the provider agrees to accept discounted rates,

and describes the specific practices the payor utilizes to comply with paragraph (2) of subsection (b).

(2) Identifies the provider's written agreement that a contracting agent whereby the provider agrees to be included on lists of contracted providers sold, leased, transferred, or conveyed to payors that do not actively encourage beneficiaries to use the list of contracted providers pursuant to subsection (c).

(g) For the purposes of this section, the following terms have the following meanings:

(1) "Beneficiary" means:

(A) For workers' compensation, an employee seeking healthcare services for a work-related injury;

(B) For automobile insurance, a named insured; and

(C) For group or individual health care coverage through a health insurance entity or a disability insurer, a subscriber, an enrollee, or an insured.

(2) "Contracting agent" means an individual or entity, including, but not limited to, a third-party administrator or trust, a preferred provider organization, or an independent practice association, while engaged, for monetary or other consideration, in the act of selling, leasing, transferring, assigning, conveying, or arranging the availability of a provider or provider panel to provide healthcare services to beneficiaries. For purposes of this section, a contracting agent shall not include a health insurance entity, an insurer licensed under the insurance laws to provide disability, life, automobile, or workers' compensation insurance, or a self-insured employer.

(3) "Health insurance entity" means an entity subject to the insurance laws of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide health insurance coverage, including, but not limited to, an insurance company, health maintenance organization and a non-profit hospital and medical service corporation. However, for purposes of this section, no contracting agent shall be considered a health insurance entity.

(4) "Payor" means a health insurance entity, an insurer licensed under the insurance laws of this state to provide disability, life, automobile, or workers' compensation insurance, a self-insured employer, a third-party administrator or trust, or any other third-party vendors responsible to pay for healthcare services provided to beneficiaries. However, for purposes of subsections (e) and (f) a payor shall not include a healthcare service plan, a specialized healthcare service plan, an insurer licensed under the insurance laws of this state to provide disability, life, automobile, or workers' compensation insurance, or a self-insured employer.

(5) "Payor summary" means a written summary that includes the payor's name and the type of plan, including, but not limited to, a group health plan, an automobile insurance plan, and a workers' compensation insurance plan.

(6) "Provider" means any physician, hospital or other person which is licensed or otherwise authorized in this state to furnish healthcare services.

SECTION 2. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of

the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.